

Appl. No. 10/696,682  
Docket No. 9401  
Amdt. dated August 16, 2007  
Reply to Office Action mailed on May 16, 2007  
Customer No. 27752

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# REMARKS

## Claim Status

Claims 1-19 are currently pending.

Claim 20 is withdrawn without prejudice as being directed toward a non-elected invention.

## Rejection of Claims 1, 3, 7-14 and 18 under 35 USC §112.

The Office Action states that Claims 1, 3, and 7-14 are rejected under 35 USC §112 for failing to comply with the written description requirement. The Office Action states that the term "linking unit" is an indistinct word which does not allow one skilled in the art to visualize or recognize the identity of the subject matter purportedly described. While Applicants respectfully disagree with this statement and assert that one skilled in the art would understand that a linking unit is something which links portions of the ketoamide together, Applicants have amended the claims removing the term "linking unit" to facilitate prosecution. The Office Action further states that Claim 18 is rejected under 35 USC §112 for failing to comply with the written description requirement. The Office Action states that the term "guar derivative" is not clearly defined in the specification. Applicants have amended Claim 18 to state "guar gum" in place of "guar derivative."

## Rejection of Claims 1, 3, 7-14, and 17-19 under 35 USC §103(a) as being unpatentable over US Patent App. 2002/0102228.

Claims 1, 3, 7-14, and 17-19 are rejected under 35 USC §103(a) over US Patent App. 2002/0102228 (hereinafter "Dunlap"). The Office Action states that Dunlap discloses shampoos providing a superior combination of anti-dandruff and conditioning. The Office Action further states that the reference differs from the instant claims as it does not disclose the ketoamides with the formula recited in the instant claims. The Office Action concludes that it would have been obvious in a self-evident manner to have selected structure of the disclosed formula from one list and 1-hydroxy-2-pyridinethione from another, motivated by the unambiguous disclosure of each individually, and consistent with the basic principle of patent prosecution that a reference should be considered as expansively as is reasonable in determining the full scope of the contents

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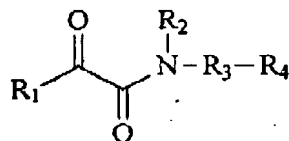
within its four corners. Applicants traverse the obviousness rejection and assert that a prima facie case of obviousness has not been established as each and every element of the claimed invention has not been taught by the cited references. Additionally, there exists no motivation to modify the reference to arrive at the claimed invention.

The Office Action states that the claimed ketoamides are not taught by the cited references. As stated in the application the particular combination of elements, as claimed, results in an improved composition. The Office Action fails to state any motivation to modify the ketoamides in the cited references to result in the claimed ketoamide. The current application does not disclose nor claim generally ketoamides as delivering the improved composition, rather the application discloses and claims the specific ketoamide formula as claimed. Therefore, the cited general disclosure of ketoamides is not sufficient to make obvious to one skilled in the art to arrive at the claimed combination of deterative surfactant, anti-dandruff agent, and ketoamide of a particular formula.

Rejection of Claims 1, 3, 7-15, and 17-19 under 35 USC §103(a) as being unpatentable over US Patent App. 2003/0165449.

Claims 1,3, 7-15, and 17-19 are rejected under 35 USC §103(a) over US Patent App. 2003/0165449 (hereinafter "Kaczvinsky"). The Office Action states that the composition disclosed in Kaczvinsky comprises an alpha-keto amide to inhibit *Malassezia globosa* lipase, which is believed to cause dandruff; surfactants, water and cationic polymers. Applicants traverse the obviousness rejection and assert that a prima facie case of obviousness has not been established as each and every element of the claimed invention has not been taught by the cited references. Additionally, there exists no motivation to modify the reference to arrive at the claimed invention.

Applicants assert that the cited reference fails to disclose the claimed ketoamide surfactant, represented by the following formula:



wherein,

R<sub>1</sub> is a C8-C28 alkyl or alkenyl,

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R<sub>2</sub> is a hydrogen or C1-C8 alkyl,

R<sub>3</sub> is selected from the group consisting

of  $\text{---}(\text{CH}_2)_n\text{---}$  and  $\text{---CH}_2\overset{\text{OH}}{\underset{|}{\text{CH}}}\overset{\text{O}}{\underset{||}{\text{C}}}\text{OC}(\text{CH}_2)_m\text{---}$ ,

wherein n is 1-20,

wherein m is 1-20, and

R<sub>4</sub> is a substituted amine or nitrogen-containing heterocycle.

Additionally, Applicants assert that the Kaczvinsky reference fails to disclose the presently claimed composition comprising a from about 5 to about 50 weight percent of a deterative surfactant, from about 0.1 to about 4 weight percent of an anti-dandruff agent, from about 0.001 to about 50 weight percent of at least one ketoamide surfactant with the claimed formula. As stated in the Office Action one must pick and choose from different lists of alpha keto amide compounds and anti-dandruff agents to arrive at the present claimed invention. The Office Action fails to disclose why one would have been motivated to combine these particular elements to arrive at the presently claimed improved composition. Therefore, Applicants assert that the cited general lists of alpha keto amide compounds and anti-dandruff agents is not sufficient to make obvious to one skilled in the art the claimed combination of deterative surfactant, anti-dandruff agent, and ketoamide of a particular formula.

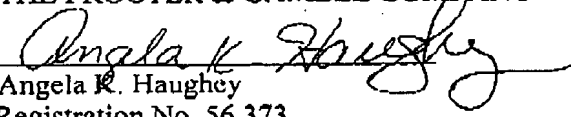
#### Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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